

Misc

2300 Lake Elmo Drive
Billings, MT 59105
February 12, 2002

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks

Director's Office	Lands Section
Parks Division	Design & Construction
Fisheries Division	Legal Unit
Wildlife Division	Regional Supervisors

Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Wayne Hirst, Montana State Parks Foundation
Bob Harrington, DNRC Area Manager, Southern Land Office
County Commissioners
Allie Wood, USDA Forest Service

Ladies and Gentlemen:

The enclosed draft Environmental Assessment (EA) has been prepared for the USDA's Lewis Creek foot bridge and horse ford, and is submitted for your consideration.

Questions and comments will be accepted until March 13, 2002.

If you have questions or need additional copies of the draft EA, please contact Montana Fish, Wildlife & Parks at 247-2940. Please send any written comments to the following address:

Lewis Creek Bridge and Ford EA
C/O Montana Fish, Wildlife & Parks
2300 Lake Elmo Drive
Billings MT 59105 or
(jdarling@state.mt.us)

Thank you for your interest,

Harvey E. Nyberg
Regional Supervisor

Enclosure

Carbon⁹

DEPARTMENT OF FISH, WILDLIFE AND PARKS
1420 E 6th Ave, PO Box 200701 Helena, MT 59620-0701
(406) 444-2535

ENVIRONMENTAL ASSESSMENT

Project Title Lewis Creek Foot Bridge and Horse Ford

Division/Bureau Fisheries/Management

Program Fisheries

Description of Project The proposed action calls for the removal of the unsafe Lewis Creek foot bridge, and construction of a new foot bridge and horse ford in a narrower section of the creek at T7S, R18E, S15, NW1/4, SE1/4.

POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats				X		
2. Water quality, quantity & distribution				X		
3. Geology & soil quality, stability & moisture				X		
4. Vegetation cover, quantity & quality			X			I-4
5. Aesthetics				X		
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources				X		
8. Demands on environmental resources of land, water, air & energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
9. Historical & archaeological sites					X	

POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities			X			II-7
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services				X		
11. Industrial & commercial activity				X		
12. Demands for energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows				X		

Other groups or agencies contacted or which may have overlapping jurisdiction: US Army Corps of Engineers

Individuals or groups contributing to this EA: None

Recommendation concerning preparation of EIS Not necessary; no significant impacts.

EA prepared by : J. Darling

Date: 2/12/02

COMMENTS

I-4: The construction of the approaches to the horse ford will disturb minimal vegetation, mostly on the northern side. The foot bridge construction will affect only a small area for the sill placements. Five to six small trees will be removed.

II-7: Construction of the foot bridge and horse ford will improve recreational access across Lewis Creek and to areas of the Custer Forest beyond.

APPENDIX A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without

compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(List any mitigation/stipulations required, or note "None".)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES

NO

___X___

1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?

___X___

2. Does the action result in either a permanent or indefinite physical occupation of private property?

___X___

3. Does the action deprive the owner of all economically viable uses of the property?

___X___

4. Does the action deny a fundamental attribute of ownership?

___X___

5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is **NO**, skip questions 5a and 5b and continue with question 6.]

5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?

5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?

___X___

6. Does the action have a severe impact on the value of the property?

___X___

7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]

- _____ _____ 7a. Is the impact of government action direct, peculiar, and significant?
- _____ _____ 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
- _____ _____ 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

Application
Revised 01/01/00

AGENCY USE ONLY Application # _____ Date Received _____
Date Accepted _____ Date Forwarded _____

**JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS,
WETLANDS, FLOODPLAINS AND OTHER WATER BODIES**

To reduce paperwork, the agencies listed below have created this joint application form. This is **NOT** a joint permit. In the box below, **check all permits** that apply to your proposed work. After you complete the form, make a copy for each permit checked and sign each copy. **Send one copy with original signatures** to each agency responsible for each permit you have checked. Refer to the "Information for Applicant" sheet on the back of this form or the "Guide to Stream Permitting in Montana," available from participating agencies, for more information.

PERMIT	AGENCY	FEE
<input type="checkbox"/> Natural Streambed & Land Preservation Act (310)	Local conservation district	No Fee
<input type="checkbox"/> Stream Protection Act (SPA124) (for government agencies or government contractors only)	MT Department of Fish, Wildlife & Parks (DFWP)	No Fee
<input type="checkbox"/> Floodplain Permit	County Floodplain Administrator	Varies (\$25-\$400)
<input type="checkbox"/> Section 404/Section 10 Permits	U.S. Army Corps of Engineers (COE)	Varies (\$0-\$100)
<input type="checkbox"/> 3A Authorization	MT Department of Environmental Quality (DEQ)	No Fee
<input type="checkbox"/> Navigable Rivers Land Use License/Easement	MT Department of Natural Resources & Conservation (DNRC)	License \$25-- Easement \$50

NOTE: Other laws may apply. It is your responsibility to obtain all necessary permits before beginning work. **Incomplete applications will be rejected.**

1. NAME OF **LANDOWNER** USDA Forest Service
Address Beartooth Ranger District HC 49 Box 3420 Day **Phone** (406) 446-2103
City/State/Zip Red Lodge Montana 59068 Evening Phone _____

2. NAME OF **APPLICANT** (if different from landowner)

Applicant is: (check one) Landowner Contractor Other (explain) _____
☒ Government Agency Landowner's Agent (Title) _____

Address _____ Day **Phone** _____

City/State/Zip _____ Evening Phone _____

Has the landowner consented to this project? Yes No

3. ATTACH A **MAP** with directions to locate the site where the work will be done. ☒ Yes, attached.

4. NAME OF **STREAM** OR **WATER BODY** at site location Lewis Creek Nearest **town** Nye
Location 1/4 NW 1/4 SE 1/4, Section 15, Township 7S, Range 18 E, County Carbon

This space is for SPA 124 permits only (government projects).

Project Name _____

Control Number _____ Contract letting date _____

5. **TYPE OF PROJECT** (check all that apply)

Stream Crossing (bridges, culverts, fords)
Bridge/Culvert Removal
Road Construction/Maintenance
Bank Stabilization
Flood Protection
Channel Alteration
Irrigation Structure

Fish Habitat/Pond
Recreation (docks, marinas, etc.)
New Residential Structure
Manufactured Home
Commercial Structure
Improvement to Existing Structure
Utilities

Mining
Dredging
Core Drill
Placement of Fill
Water Well
Wetland Alteration
Other _____

6. WHAT IS THE **PURPOSE** of the proposed project?

The proposed action calls for the removal of the unsafe Lewis Creek bridge, the construction of a horse ford and the construction of foot bridge above the horse ford in narrower section of the creek. The Lewis Creek bridge abutment will not be removed. The approachments to the creek will be at a 2-5% grade. The north approach minimal grading needs to be completed and on the south approach no grading will occur. In Lewis creek itself no construction will be completed. A natural dam barrier already exists creating a flat shallow area for stock crossing. No rocks will be removed or placed in the creek.

7. IS APPLICATION for an **annual maintenance permit**?

___ Yes

X No

If yes, an **annual plan of operation** must be attached to this application.

8. PROPOSED **CONSTRUCTION DATE**: Start June / 01 / 2002 Finish July / 01 / 2002

Is any portion of the work **already completed**? ___ Yes X No If yes, describe the completed work.

9. IN SECTIONS 9(a) through 9(e), DESCRIBE IN DETAIL the **work** you plan to do. Attach additional sheets if necessary.

Attach a plan or drawing of the proposed project. Include (1) the dimensions of the project; (2) dimensions and location of fill or excavation sites; (3) location of storage or stockpile materials; (3) location of existing or proposed structures, such as buildings, utilities, roads, or bridges; (4) drainage facilities. Floodplain permit applicants are encouraged to inquire locally since additional information is required.

a. **Dimensions** of the project. Describe the impacted area. How many linear feet of bank will be impacted? How far will the proposed project extend into and away from the water body?

Below the current bridge a natural crossing already exists. The north approach would need about 20 feet of grading down from the original trail to the creek crossing. Across the creek on the south side no tread work would need to be completed. A game trail leads down to the creek. The new foot bridge would be built above the current bridge. The bridge will be placed on simple sills allowing for minimal bank disturbance. The sill width will be five feet wide.

b. How much **vegetation** and what type of vegetation will be removed or covered with fill material? How will the disturbed area be reclaimed?

The removal of the Lewis Creek bridge will not disturb any vegetation. The construction of the approaches to the horse ford will disturb minimal vegetation, mostly on the northern side. The foot

bridge construction will affect only a small area for the sill placements. Five to six small trees will need to be removed

- c. What **materials** will be used, and how much (cubic yards, linear feet, etc., of each)?

The less than one cubic yard will be used to retread the North and South approaches.

- d. What **equipment** will be used for the work?

Hand crews.

- e. What **steps** will be taken during and after construction to minimize: (use additional sheets if necessary)

1. Erosion and sedimentation?

The abutment will remain after the bridge is dismantle to prevent the unsupported bank from moving into the creek

2. Stream channel alterations?

No stream alterations will occur. The footbridge sills will be place above the high water mark. No construction in the creek will occur.

3. Effects on stream flow or water quality caused by materials used or removal of ground cover?

No effects on the stream flow or water quality will occur.

4. Effects on fish and aquatic habitat?

No long-term effects would occur on fish and aquatic habitat

5. Risks of flooding or erosion problems upstream and downstream?

No risk of flooding above or below the project.

10. COMPLETE 10(a) through 10(c) **ONLY** if you are applying for a **FLOODPLAIN OR SECTION 404/SECTION 10 PERMIT**.

- a. Will the project involve placement of **fill material** in a wetland? If yes, describe. How much **wetland** area will be filled? Include a delineation of the wetland boundary and a calculation of the impacted acreage.
- b. List names and addresses of **landowners** adjacent to and across from the project site. (At its discretion, the permitting agency may contact these landowners.)

- c. If you have already applied for any permits, list them and indicate whether they were **issued, denied**, or are **pending**.

Application Submittal Information (Send only to those agencies checked on page one of this form.)

310 Permits. Submit three copies of the application form and plans to the conservation district. Nothing additional is required unless specifically requested by the conservation district. **Application review usually takes 30 to 60 days.**

SPA 124 Permits (government projects only). A set of preliminary plans or sketches of the proposed project must accompany the application. (Note: For projects sponsored by the Department of Transportation, two sets of plans must be sent with this form to the Helena DFWP office.) **Application review may take up to 60 days.**

Floodplain Permits. Prior to submitting this application, contact the local floodplain administrator. Permit requirements and fees may vary. Applicant may be required to hire a professional engineer to submit plans. **Application review usually takes up to 60 days.**

Section 404/Section 10 Permits. Nothing additional is required unless specifically requested. **Application review may take 30 to 120 days.**

3A Authorizations. Do not send this form directly to DEQ if you are applying for a 310 permit or SPA 124 permit. You will be notified if you must apply. **If this authorization is needed, application review usually takes 10 days.**

Easements on State Navigable Water Bodies. Additional fees, a land survey, and other information will be required. Contact the local DNRC land office for information. **Land use license review usually takes up to 60 days. Easements may take up to 90 days.**

SIGNATURES/AUTHORIZATIONS

I certify that the above statements are true and correct. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the landowner. I authorize the inspection of the project site by inspection authorities. Both the landowner and the person doing the work have the duty to comply with the stipulations of all permits and laws.

For 310 applicants only

When an applicant or other team member disagrees with the conservation district supervisors' decision, the applicant or other team member shall request that an arbitration panel be appointed as provided in MCA 75-7-113 to hear the dispute and make a decision. The request must be made in writing and must be received by the district within five working days of the receipt of the supervisors' decision. Disputes may also be solved informally. The rules of arbitration are included with this form.

By signing this form, I acknowledge that I have read and understand the Natural Streambed and Land Preservation Act rules of arbitration and agree, in any disputes arising from the supervisors' decision, to abide by the rules of arbitration.

Signature of Landowner

Date

Signature of Applicant

Date

(may be waived by agency for utilities and other easement holders)